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10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In Re:

13 RACHAEL EARL,

14 Debtor

15 Case No.: 2:13-bk-18751-EPB

16 CHAPTER 7

17 **DEBTOR'S MOTION TO**
18 **RECONSIDER ORDER DENYING**
19 **HOMESTEAD EXEMPTION AT 881**
20 **NORTH SUNNYVALE AVENUE**

21 Comes now the Debtor and respectfully requests the Court reconsider its ruling
22 denying Debtor's claimed homestead exemption for her residence at 881 North
23 Sunnyvale Avenue, Gilbert, Arizona, 85234 (See Docket #104). A formal order was
24 uploaded but has not been signed (Docket #109).

25 The court is familiar with the underlying facts, which need not be repeated herein,
26 except that debtor has since amended her schedules to indicate that all of her belongings
27 are now located at the Sunnyvale property, which was the case from the time she moved
28 and claimed her homestead allowance in the Sunnyvale property (See Docket #115).

1 The failure to amend the schedules to indicate otherwise was an oversight on the part of
2 Debtor's counsel.

3 4 ARGUMENT

- 5 1. A claimed exemption is presumptively valid. See *In re Carter*, 182 F.3d 1027 –
6 Court of Appeals, 9th Circuit 1999 (Citing 9 Collier on Bankruptcy ¶ 4003.04 (15th
7 ed. Rev. 1998); *In re Patterson*, 128, B.R. 737, 740 (Bankr.W.D.Tex.1991)).
- 8 2. Lund Cadillac, as movant, had the burden of persuasion in proving that the
9 exemption was not properly claimed. See Fed. R. Bankr.P. 4003(c). Lund only
10 cites as proof in their original objection the Bankruptcy Schedules and a vague
11 notion that Lund did not believe Debtor lives at the Sunnyvale Property.
12
- 13 3. The Ninth Circuit has held in *Schultz v. Mastrangelo* that in Arizona, a homestead
14 exemption could be claimed at any time up until the hour of the sale” (See Schultz
15 v. Mastrangelo, 333 F.2d 278 (9th Cir.1964) at 279). See also *In re Gitts*, 116 BR
16 174, 9th Circ. BAP (1990). See similar cases cited in debtor's prior brief at
17 Docket 96.
18
- 19 4. The applicability of the state exemptions is set forth in 11 U.S.C. §522(3)A)
20 which provides that the exemptions must be determined in accordance with the
21 state law “applicable on the date of filing.”
22
- 23 5. “[I]t is the *entire* state law applicable on the filing date that is determinative” of
24 whether an exemption applies. *In re Zibman*, 268 F.3d 298, 304 (5th Cir. 2001).
25
- 26 6. The court's reasoning in its opinion rendered on April 15, 2015, Docket # 104
27 rests upon the “snapshot rule” which is that exemptions are fixed at the time of the
28

1 bankruptcy petition, and that the “exemption must validly exist under Arizona
2 exemption law as that law existed on the petition date.” The “snapshot rule” was
3 set forth in *White v. Stump*, 266 U.S. 310, 313, 45 S.Ct. 103, 69 L.Ed 301 (1924).

4
5 7. Debtors would urge the court to carefully review the the “snapshot rule” in light
6 of the reasoning of the subsequent case of *Myers v. Matley*, 318 U.S. 622, 63
7 S.Ct. 780, 87 L.Ed 1043 (1943). In *Myers*, discussed in Debtor’s previous brief,
8 the court considered the issue as to whether a post-petition homestead declaration
9 was valid under Nevada law. The Court considered the *White* case at some length
10 and held that the homestead exemption claimed by the debtor in *White*, was
11 invalid *because the claimed homestead did not comply with Idaho law. See id* at
12 625. The court specifically pointed out that “If the law of Nevada respecting
13 homestead exemptions were like that of Idaho, or operated in the same way, *White*
14 v. Sump would be in point.” *Id.*

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17 8. The court in *Myers* then went on to an analysis as to whether the post-petition
18 claim homestead claimed in Nevada “would be effective as against a creditor to
19 prevent a judicial sale of the property if made and recorded after levy but before
20 sale thereunder. If it would it must be equally effective as against the trustee,
21 whose rights rise no higher than those of the supposed creditor and attach at the
22 date of the inception of bankruptcy.” *Id.* At 627.

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25 9. The court went on to conclude that an analysis of the Nevada law resulted in the
26 conclusion that the debtor was entitled to his homestead exemption if the selection
27 and recording occurred at any time before actual sale under execution.
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1 10. The court then addressed *White v. Stump*, and concluded:

2 In conformity to the principle announced in *White v. Stump* that the
3 bankrupt's right to a homestead exemption becomes fixed at the date
4 of the filing of the petition in bankruptcy and cannot thereafter be
5 enlarged or altered by anything the bankrupt may do, it remains true
6 that, under the law of Nevada, the right to make and record the
7 necessary declaration of homestead existed in the bankrupt at the
8 date of filing the petition as it would have existed in case a levy had
9 been made upon the property. The assertion of that right before actual
10 sale in accordance with State law did not change the relative status of
11 the claimant and the trustee subsequent to the filing of the petition.
12 The federal courts have generally so held and have distinguished
13 *White v. Stump* where the state law was similar, in terms or in effect,
14 to that of Nevada.

Myers v. Matley at 628.

11 11. This court in its ruling stated that the exemption must validly exist under Arizona
12 exemption law as that law existed on the petition date. As Debtor pointed out in
13 her response to Lund Cadillac's objection, Arizona law is crystal clear that a
14 debtor can claim an homestead exemption until the property is sold. See
15 Debtor's initial Response in paragraphs 8, 9, and 12.

16 12. Thus while the "snapshot" rule fixes the exemptions at the time of the bankruptcy
17 Petition; under 11 U.S.C. §522(3)A) and the rule announced in *Myers*, the court
18 must look to the state law to determine how the exemptions are to be applied.

19 13. The chapter 7 trustee has the hypothetical rights of a judgment creditor. Assume
20 that a judgment creditor had obtained a judgment against debtor while Debtor was
21 residing in the Claiborne property. There is nothing in Arizona law that would
22 prohibit her from moving into the Sunnyside property and claiming her exemption
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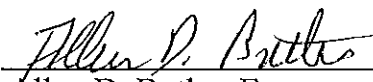
1 if she did so prior to the sale of the Sunnyside property. Under 522(a)(3) and
2 *Myers*, the same result should obtain in this case.

3
4 14. The bothersome issue in this case is whether the debtor has the right to claim the
5 homestead exemption post-petition. Debtor has previously presented the Arizona
6 law that supports that proposition. Debtor would direct the court's attention to *In*
7 *re Elia*, 198 B.R. 588 (Bankr. Ariz. 1996) wherein the debtor sold her previously
8 homesteaded property and used the proceeds to acquire a different property which
9 she properly homesteaded over the objection of her judgment creditors. While
10 there were other problems with the debtor's case in *Elia*, Judge Curley concluded
11 that the remedy sought by the creditors (to turn over the entire homesteaded
12 amount) was "pursuing a remedy that is too harsh." 198 B.R. at 603. If the debtor
13 in *Elias* could properly homestead a property acquired post-petition, the debtor in
14 this case should be able to homestead a property which she owned at the time of
15 filing.
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18 15. Furthermore, the Arizona statutes specifically contemplate that a Debtor can
19 change her homestead by selling a property and reinvesting the proceeds in a new
20 home, provided the reinvestment is done within 18 months. See ARS §33-
21 1101(C). Thus in that instance, the homestead allowance which was applied at
22 the time of filing would survive the "snapshot rule" which might otherwise
23 prohibit a transfer of the homestead allowance. See *In re Smith*, 515 B.R. 755
24 (Bankr. Ariz.2014). (Debtors could sell their Arizona property and reinvest the
25 proceeds in a residence in Utah).
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1 Debtor respectfully suggests that when the court looks at the analysis in *Myers v.*
2 *Matley*, and the applicable state law, in its entirety, and for the reasons set forth herein
3 and in Debtor's prior brief (Docket #96) which Debtor incorporates herein by reference,
4 the objection by Lund Cadillac must be overruled.
5

6 DATED this 26th day of June, 2015.
7

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9 
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15 ORIGINAL of the foregoing electronically
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17 Clerk of the U.S. Bankruptcy Court
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